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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 JOSEPH P. KRENTKOWSKI,

11 Plaintiff,

12 v.

13 MICHAEL J. ASTRUE, Commissioner of
Social Security,

14 Defendant.

Case No. C08-5605 FDB

ORDER FOR EAJA FEES,
EXPENSES AND COSTS

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16 This matter comes before the Court on Plaintiff's motion for an award of attorney's fees and
17 costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(a), (b). Plaintiff seeks an award
18 of \$4,822.53 in attorney fees and \$66.28 in expenses. Plaintiff also seeks an award of \$23.50 in
19 costs pursuant to 28 U.S.C. § 1920. The Defendant has filed a response stating the Commissioner
20 has no objection to the requested fees, expenses and costs.

21 The Ninth Circuit has established that the Equal Access to Justice Act (EAJA) applies in
22 social security cases. Wolverton v. Heckler, 726 F.2d 580 (9th Cir. 1984).

23 The EAJA provides in pertinent part:

24 Except as otherwise specifically provided by statute, a court shall award to a
25 prevailing party other than the United States fees and other expenses ... incurred by

1 that party in any civil action ... brought by or against the United States in any court
2 having jurisdiction over than action, unless the court finds that the position of the
United States was substantially justified or that special circumstances make an award
unjust.

3 A party can be found to prevail when there is a “material alteration of the legal relationships
4 of the parties,” and the material alteration is “judicially sanctioned.” Carbonell v. INS, 429 F.3d
5 894, 898 (9th Cir. 2005). A material alteration of the legal relationships of the parties occurs when
6 one of the parties is required to do something directly benefitting the other party that they would not
7 otherwise have had to do. Id. at 900. A party need not succeed on every claim in order to prevail.
8 Rather, a plaintiff prevails if he has succeeded on any significant issue in litigation which achieved
9 some of the benefit sought in bringing suit. Id., nt. 5. A litigant prevails for purposes of awarding
10 EAJA fees without a judicial judgement as long as the action has sufficient “judicial imprimatur.”
11 Id. at 899.

12 The Supreme Court has defined the term “substantially justified” as “justified in substance
13 or in the main-that is, justified to a degree that could satisfy a reasonable person.” Pierce v.
14 Underwood, 487 U.S. 552, 565 (1988). To be substantially justified, the government must have “a
15 reasonable basis both in fact and in law.” Id. at 568. The Ninth Circuit has held that the
16 government must be substantially justified during both the underlying agency action and the
17 litigation itself. Al- Harbi v. INS, 284 F.3d 1080, 1084-85 (9th Cir. 2002). Thus, the government
18 must meet this threshold twice - once with regard to the underlying agency action, and then with
19 regard to its litigation position in the proceedings arising from that action. See Kali v. Bowen, 854
20 F.2d 329, 332 (9th Cir. 1988).

21 The party seeking fees must submit “an itemized statement ... stating the actual time
22 expended and the rate at which fees and other expenses were computed.” 28 U.S.C. §
23 2412(d)(1)(B). The appropriate number of hours includes all time “reasonably expended in pursuit
24 of the ultimate result achieved.” Hensley v. Eckerhart, 461 U.S. 424, 431 (1983). However,
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1 “excessive, redundant, or otherwise unnecessary” hours should be excluded from the fee award. Id.
2 at 434. Although the fee applicant bears the burden of documenting the appropriate hours
3 expended, “the party opposing the fee application has a burden of rebuttal that requires submission
4 of evidence to the district court challenging the accuracy and reasonableness of the hours charged or
5 the facts asserted by the prevailing party in its submitted affidavits.” Gates v. Deukmejian, 987
6 F.2d 1392, 1397-98 (9th Cir. 1993).


7 By Order dated April 30, 2009 this action was reversed and remanded to the Social Security
8 Administration for further administrative proceedings. The Order is fully favorable to Plaintiff and
9 materially advances his position. The Defendant’s position was not substantially justified as
10 defined by the EAJA, and that there are no special circumstances that would make an award in this
11 case unjust. Counsel for Plaintiff has filed his affidavit seeking attorney fees totaling \$4,822.53
12 based upon an expenditure of 27.9 hours of attorney's time, \$66.28 in expenses, and 23.50. in costs
13 to maintain this action. The government has filed a response stating it has no objection to this
14 request.. The Court finds the requested fees and expenses to resolve this matter to be reasonable.
15 Plaintiff has provided sufficient itemized statements of how the time was distributed.

16 ACCORDINGLY,

17 IT IS ORDERED:

18 Plaintiff’s motion for an award of costs and attorney’s fees [Dkt # 21] is **GRANTED**.
19 Plaintiff’s counsel, Robert A. Friedman, is awarded \$4,822.53 in attorney fees and \$66.28 in
20 expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(a), (d), and \$23.50 in costs under
21 the Equal Access to Justice Act, 28 U.S.C. § 1920, for a total award of \$4,912.31.

22 DATED this 23rd day of June, 2009.

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24 
25 FRANKLIN D. BURGESS
26 UNITED STATES DISTRICT JUDGE